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SUBJECT: GOC READY TO RETURN AFRO-COLOMBIAN LANDS IN CHOCO

REF: 07 BOGOTA 3855

11. SUMMARY: The GOC has resolved the legal issues surrounding the return of the Afro-Colombian communal territories of Curvarado and Jiguamiando to their rightful inhabitants. The GOC determined that the communities, displaced by paramilitaries in the mid-1990s, own 29,300 hectares of land occupied by African palm plantations. Still, security concerns have prevented most community members from returning to their land, and basic infrastructure will require work. The Ministry of the Interior and Justice (MinInt) expects to resolve the security issues within the next two months, clearing the way for the communities' return. END SUMMARY

Background

12. Conflict between paramilitary and FARC forces displaced about 8,000 members of the Afro-Colombian communities of Curvarado and Jiguamiando in the department of Choco in the mid-late 1990s. The GOC had previously recognized the communities' right to their land pursuant to Article 55 of the Constitution of 1991 and Law 70 of 1993. The GOC's land titling agency, INCODER, delineated the boundaries of 110,000 hectares of "communal territories" for Curvarado and Jiguamiando between 2000 and 2001. However, when community members tried to return to their lands in 2001-2002, they found 35,000 hectares, or roughly a third of the land, occupied by African palm plantations.

Untangling the Mess

13. In 2006 the GOC began the process of untangling ownership of the disputed 35,000 hectares. Lorena Garnica, a special advisor to the Minister of Agriculture and Rural Development (MinAg), said "buck passing" of responsibility between GOC agencies remained a problem until the MinAg agreed to coordinate the legal resolution of the cases. The MinAg decided the most effective process would be to pursue administrative solutions through INCODER and the Superintendent of Notarization and Registration (as opposed to filing court cases which could take many years).

14. In July 2007 the Consejo de Estado (Colombia's highest administrative court entity) issued an advisory opinion invalidating the plantation companies' claims to 5,100 disputed hectares because they were not registered on time. In September the Superintendent of Notarization and Registration revoked companies' claims to another 24,200 hectares (6,500 hectares of claims based on false documents and 17,700 based on false claims that river movement had created new land). In August and September INCODER also

determined that the companies had legitimate claims to 6,400 hectares.

Legally Resolved, But Further Civil and Criminal Action Likely

¶5. Catalina Riveros of the MinAg's Office of Rural Development has coordinated the legal resolution of the cases. Riveros said the MinAg's role ended in September with the decisions regarding ownership. If plantations challenge the decisions by the Consejo de Estado and Superintendent of Notarization and Registration, which Riveros thinks likely, the Defensoria del Pueblo (National Ombudsman) will defend the decisions. However, Riveros said such law suits should not legally prevent Afro-Colombians from taking possession of their lands. Additionally, because the plantations' actions were determined to be in "bad faith," the communities own any African palm trees on their land.

¶6. MinInt Vice-Minister Maria Isabel Nieto, who has responsibility for coordinating security issues for the communities' return, noted that legally the communities still need to request local authorities to inspect the lands and formally hand the title over to them. She described this as a simple administrative requirement that she anticipates will be accomplished imminently. Nieto said that once the communities ask local authorities for the inspection-title handover, MinInt will help coordinate the delivery.

¶7. In addition, Prosecutor Hector Cruz said in the next six month he plans to file criminal cases against 20 plantation officers on charges of using false documents and forcing people off their land (in addition, he expects to bring charges against non-company individuals for eight murders related to the land takings). Nieto noted that the government has reached out to other palm companies in the hope that arrangements could be reached to allow the communities to take advantage of the valuable palm trees on their property.

Security Issues Remain

¶8. GOC officials and local residents told us security remains a serious concern. Nieto said the police and military currently provide protection to specific at-risk community members, but agreed that the communities need an overall security plan. She is working with local authorities, the communities, police and the military to develop such a plan, and expects to finish it by March. Nieto is also coordinating the return with Sister Cecilia Naranjo, the director of the human rights group "Justice and Peace" which represents the communities. Naranjo told us she is confident that residents will be able to return once the security plan is in place.

Living Conditions Will Need Work

¶9. Nieto and Naranjo agreed that even after security has been established, living conditions will be difficult. Most homes have been destroyed or fallen into disrepair. Public facilities for health, education and other social services are non-existent outside of two "humanitarian zones" where about 500 people live. Nieto has begun working with Accion Social (the President's social program office) on improving living conditions. Diego Molano, Accion Social's Deputy Director, told us the GOC's Centro de Coordinacion de Accion Integral (CCAI) would soon start working in Curvarado and Jiguamiando. CCAI coordinates about eighty million dollars of GOC spending to develop social services in areas where security exists but state control remains shaky.

Brownfield